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	PERC-00	DS-00	EAP-00	OIGO-00	FBIE-00	FRB-00	H-00
	TEDE-00	INR-00	IO-00	LAB-01	L-00	DCP-00	NSAE-00
	NIMA-00	GIWI-00	P-00	SCT-00	FMPC-00	SP-00	SSO-00
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FM AMCONSUL HAMBURG

TO SECSTATE WASHDC IMMEDIATE 0000

INFO FRG COLLECTIVE PRIORITY

AMEMBASSY MADRID PRIORITY

DEPT OF JUSTICE WASHDC PRIORITY

RELEASED IN PART
B1, 1.4(B), 1.4(D)

C O N F I D E N T I A L HAMBURG 004021

DEPT FOR EUR/AGS, EUR/PPD, L/LEI, AND S/CT
JUSTICE FOR TERESA WALLBAUM, MIKE BURKE

E.O. 12958: DECL: 11/21/2014

TAGS: KJUS, PREL, PTER, GM

SUBJECT: TERRORISM: MOTASSADEQ RETRIAL UPDATE -- NEW
SPANISH ANGLE

REF: A. A. HAMBURG 60 AND PREVIOUS
B. B. BERLIN 808 AND PREVIOUS

Classified By: ROBERT SCOTT, POL/ECONOFF for Reasons: 1.4 (b) and (d)

1. (C) Summary and Comment: The Motassadeq retrial in Hamburg has to date closely tracked the course set in the initial trial; witness testimonies and prosecution/defense approaches appear unchanged. There has been additional focus on the unavailability of full U.S. interrogation transcripts from Ramzi Binalshibh and Khalid Sheikh Mohammed (the primary reason for the German Federal Supreme Court ordering retrial). Press disclosures (November 15) of Spanish court documents that apparently refute German intelligence service claims of not having tracked Hamburg cell members prior to 9/11 have caused a stir. The documents reportedly may contradict November 9 trial testimony by Office for the Protection of the Constitution (OPC) President Fromm; Chief Judge Schudt has now written to Fromm requesting him to comment on the apparent contradiction. In addition, co-plaintiffs (9/11 survivor

UNITED STATES DEPARTMENT OF STATE
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groups) have filed a motion for the Spanish lead magistrate to appear as a witness in the re-trial; federal prosecutors did not at this time support the co-plaintiff's motion. Conclusion of the trial is now anticipated in late February 2005. It is unclear what impact the new Spanish angle may have on the re-trial,

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End Summary.

Trial Update) Where We Stand

2. (SBU) The retrial in Hamburg of 9/11 suspect Mounir el-Motassadeq, which began on August 10 at the Hamburg Superior Court (Oberlandesgericht), has to date closely tracked the course and development of the initial trial. Many of the same witnesses have appeared and prosecution/defense core arguments and approaches appear unchanged. Witnesses fall generally into two categories) those who had direct contact with Motassadeq (students, members of mosque community that Motassadeq attended, etc) and German/U.S. police and government representatives. Prosecutors have utilized phone/computer records, videos and witness testimony to present Motassadeq as a core member of the group surrounding 9/11 pilot Atta. They have also highlighted his stint at an Afghan terror training camp, his meeting in Pakistan with Khalid Sheikh Mohammed, and witness testimonies that both portray him as radicalized and imply he was aware of the 9/11 attacks before they occurred.

3. (SBU) The defense has portrayed Motassadeq as a devout Muslim who traveled to Afghanistan to become familiar with weapons (a duty outlined in the Koran), and engaged in normal heated student debates on geopolitics and impact of U.S. policies on Muslim world. On November 9, OPC President Fromm repeated his previous allegation from the separate but related trial of fellow alleged 9/11 co-conspirator Abdelghani Mzoudi. Fromm stated that German intelligence services had not been tracking Atta's Hamburg cell prior to 9/11, and that the 9/11 attacks were planned in Afghanistan, not Germany. German law in effect at the time requires that the defendant was a member of a terrorist group based within Germany.

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4. (SBU) The retrial is now expected to conclude sometime in late February (vice the original early January date). Final witness appearances should occur in mid-February, with final arguments being presented late in the month. However, potential testimony by the Spanish magistrate (see paras 5-7) could further delay the schedule.

----- Access to USG Information at Issue -----

5. (SBU) A principal cause stated for the Federal Supreme Court,s overturning of Motassadeq,s conviction and focus of the retrial was the perceived lack of full access to individuals presumed to be in U.S. custody or at a minimum complete interrogation transcripts from Ramzi Binalshibh and Khalid Sheikh Mohammed. The Department of Justice at the

beginning of the trial provided unclassified summaries of both interrogation reports; lack of anything further has been cited by Chief

Judge Schudt as &disappointing8 and by the defense as grounds for dismissing the case. Schudt also has expressed regret that the Court,s request for information from 9/11 Commission remained unanswered. Schudt intends to write former Commission Chair Tom Keane directly to requestCommission documentation/information.

----- Spanish Document Causes Stir -----

6. (SBU) The Hamburger Abendblatt (local paper of record) on November 15 broke a story claiming that internal Spanish court documents reportedly disprove previous German intelligence agency claims not to have tracked 9/11 Hamburg cell members prior to the attacks. The paper cites a confidential document "(Az: 000035/2001 E)", originating in "Juzgado Central de Instruccion Nr. 5," that states &German services8 informed Spanish intelligence counterparts that Ramzi Binalshibh was flying from Hamburg to Tarragona on July 9, 2001 (specific flight info provided). Binalshibh is believed to have met with Atta in Terragona to finalize the 9/11 attack plans (Comment: This information seemingly contradicts November 9 testimony by OPC President Fromm claiming that German intelligence services had not been focused on the Atta

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Hamburg cell
prior to 9/11.)

7. (C) In response to the report, attorneys for co-plaintiff 9/11 survivor groups on 17 November filed a motion requesting Spanish investigative magistrate Baltasar Garcon to testify at the Motassadeq trial. Lead co-plaintiff attorney Andreas Schulz argued in court that Garcon,s testimony could shed additional light,8 on the previous testimony of OPC President Fromm. In addition, Judge Schudt indicated he would send a letter to Fromm requesting comment on the apparent contradiction between his November 9 testimony and the information contained in the Spanish documents. The court is expected to rule on the co-plaintiff motion within the next two weeks. (Note:

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8. (C) The Spanish documents have also triggered a reaction on the state-level, with Hamburg OPC representatives openly stating in the press that they had not been made aware by federal OPC of the Binalshibh trip to Tarragona.

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Co-Plaintiff,s Role

9. (C) Co-plaintiffs are under German law given a direct role in trial procedures; they have the right to question witnesses and file motions directly with the court. Three separate 9/11 survivor groups have co-plaintiff status in the Motassadeq retrial. The German government provides financial support through partial payment of legal fees/interpreter costs. One Amcit 9/11 survivor (Dominick Puopolo) has participated in all trial sessions to date and has directly questioned witnesses. Mr. Puopolo has also assumed a prominent role in press trial coverage; he recently appeared in a series of national TV documentaries covering 9/11 and the Motassadeq trial. In effect, the co-plaintiffs function as a type of

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parallel prosecution team. (Comment: this arrangement has sometimes led to clashes, both in the first trial and current retrial, between Federal Prosecutor Hemberger,s team and the co-plaintiff representatives. Co-plaintiff attorneys and Mr. Puopolo have sometimes taken a more aggressive stance in courtroom questioning; current co-plaintiff motion to question the Spanish magistrate also has not found support from Hemberger. End Comment.)

Looking Forward

10. (C) Comment: The future course of the trial may be in large part determined by the weight given by Judge Schudt to the Spanish court documents. At a minimum, these documents, along with the interrogation summaries presented by the U.S., present the court with information unavailable during the first trial. If the court aggressively pursues the Spanish documents, the question of possible German intelligence services, pre-9/11 surveillance of the Atta-cell (and potentially Motassadeq) could become an issue in the eyes of the German media and public. End Comment.

11. (U) This message was coordinated with Embassy Berlin.

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